

PAROLE BOARD[205]

Adopted and Filed

Rule making related to five-year review of rules

The Parole Board hereby amends Chapter 1, “Organization and General Administration,” Chapter 2, “Agency Procedure for Rule Making,” Chapter 3, “Petitions for Rule Making,” Chapter 4, “Declaratory Orders,” Chapter 5, “Fair Information Practices,” Chapter 6, “Public Communications and Records,” Chapter 7, “Victim Notification,” Chapter 8, “Parole and Work Release Considerations,” Chapter 9, “Certificates of Employability,” Chapter 11, “Parole Revocation,” Chapter 13, “Parole Discharge,” Chapter 14, “Executive Clemency,” Chapter 15, “Appeal of Decisions,” and Chapter 16, “Waiver and Variance Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 906.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 22, 904, 904A, 906, 908, 914 and 915 and 2022 Iowa Acts, Senate File 2322.

Purpose and Summary

A comprehensive review of Chapters 1 through 16 was performed in accordance with the requirements in Iowa Code section 17A.7(2). These amendments update rules in accordance with current practice and legislative changes, eliminate redundancy, and make rules more user-friendly.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 11, 2023, as **ARC 6824C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on March 9, 2023.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on May 10, 2023.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 1.1(1) as follows:

1.1(1) The board of parole is established by Iowa Code chapter 904A and consists of five members, including a chairperson and vice chairperson.

ITEM 2. Renumber subrules **1.1(2)** to **1.1(6)** as **1.1(4)** to **1.1(8)**.

ITEM 3. Adopt the following **new** subrule 1.1(2):

1.1(2) The board of parole shall have a pool of three alternate members to substitute for board members who are disqualified or become unavailable for any other reason for hearings.

ITEM 4. Adopt the following **new** subrule 1.1(3):

1.1(3) An alternate member is deemed a member of the board of parole only for the hearing panel for which the alternate member serves.

ITEM 5. Amend renumbered subrule 1.1(6) as follows:

1.1(6) The positions of board chairperson is and board vice chairperson are appointed by the governor from among the board members and serves serve in those roles at the pleasure of the governor.

ITEM 6. Amend rule 205—1.3(904A) as follows:

205—1.3(904A) Business location and hours. The board's business office address is Jessie Parker Building, 510 East Twelfth ~~Street~~ Street, Des Moines, Iowa 50319; telephone (515)725-5757. Business hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

ITEM 7. Amend subrule 1.4(1) as follows:

1.4(1) Meetings. The board may conduct the following meetings:

a. and *b.* No change.

c. Board session. The board shall be in session each month at any location designated by the chairperson. A board session may include:

(1) and (2) No change.

(3) Parole rescission ~~hearings~~;

(4) and (5) No change.

ITEM 8. Amend subrule 1.4(2) as follows:

1.4(2) Quorum. ~~Quorum.~~

a. and *b.* No change.

ITEM 9. Amend subrule 1.4(3) as follows:

1.4(3) Majority vote. ~~Majority vote.~~ All questions shall be decided by a majority vote of the members except as provided herein.

a. In all cases when an alternate member assumes the role of a regular board member, the number of board members for purposes of majority votes remains at five.

b. During a board session, at least one member of the panel shall not be an alternate member.

ITEM 10. Amend subrule 1.4(4) as follows:

1.4(4) Parliamentary authority. ~~Parliamentary authority.~~ Robert's Rules of Order, current edition, shall govern the conduct of all business meetings of the board except as provided herein.

ITEM 11. Amend subrule 1.4(5) as follows:

1.4(5) Minutes. ~~Minutes.~~ The board shall keep copies of the minutes of board meetings on file at the business office. The list of individuals considered by the board for action shall constitute the minutes of a board session.

ITEM 12. Amend subrule 1.4(6) as follows:

1.4(6) Public notice and agenda. ~~Public notice and agenda.~~ The board shall establish the date, time, and location of all meetings. The board shall give public notice of all meetings pursuant to Iowa Code chapter 21. The board shall mail copies of, or provide by electronic means, notices of public meetings and tentative agenda to news media that have so requested. When it is determined that an emergency meeting is required, the board shall notify the news media as soon as the need for an emergency meeting has been decided. The nature of the emergency shall be stated in the minutes.

ITEM 13. Amend subrule 1.4(7) as follows:

1.4(7) Public access to meetings. ~~Public access to meetings.~~ Members of the public have access to board meetings as provided in Iowa Code chapter 21. Persons wishing to appear before the board shall submit their requests to the business office not less than three days prior to the business meeting. Members of the public wishing to attend board meetings conducted in department of corrections penal institutions should consult, in advance, department of corrections administrative rules relating to visitation and public access.

ITEM 14. Amend subrule 1.4(8) as follows:

1.4(8) Electronic meetings. ~~Electronic meetings.~~ The board may conduct a meeting by electronic means as provided in Iowa Code section 21.8.

ITEM 15. Amend **205—Chapter 2**, introductory paragraph, as follows:

CHAPTER 2 AGENCY PROCEDURE FOR RULE MAKING

The board of parole hereby adopts ~~the agency procedure for rule making segment of the Uniform Rules on Agency Procedure which are,~~ with the following amendments, the uniform rules on agency procedure relating to agency procedure for rule making, published at <https://www.legis.iowa.gov/docs/Rules/Current?UniformRules.pdf> www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the ~~General Assembly's Web site with the following amendments:~~ general assembly's website.

ITEM 16. Amend **205—Chapter 3**, introductory paragraph, as follows:

CHAPTER 3 PETITIONS FOR RULE MAKING

The board of parole hereby adopts ~~the petitions for rule making segment of the Uniform Rules on Agency Procedure which are,~~ with the following amendments, the uniform rules on agency procedure relating to petitions for rule making, published at <https://www.legis.iowa.gov/docs/Rules/Current?UniformRules.pdf> www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the ~~General Assembly's Web site with the following amendments:~~ general assembly's website.

ITEM 17. Amend **205—Chapter 4**, introductory paragraph, as follows:

CHAPTER 4 DECLARATORY ORDERS

The board of parole hereby adopts ~~the declaratory orders segment of the Uniform Rules on Agency Procedure which are,~~ with the following amendments, the uniform rules on agency procedure relating

to declaratory orders, published at <https://www.legis.iowa.gov/docs/Rules/Current?UniformRules.pdf> www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the General Assembly's Web site with the following amendments: general assembly's website.

ITEM 18. Amend **205—Chapter 5**, introductory paragraph, as follows:

CHAPTER 5

FAIR INFORMATION PRACTICES

[Prior to 2/22/89, Parole, Board of[615] Ch 14; see also 205—Ch 6]

The board of parole hereby adopts, with the following exceptions and amendments, the ~~Uniform Rules on Agency Procedure~~ uniform rules on agency procedure relating to fair information practices which are, published at <https://www.legis.iowa.gov/docs/Rules/Current?UniformRules.pdf> www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the General Assembly's Web site general assembly's website.

ITEM 19. Amend rule **205—5.1(17A,22)**, definitions of “Confidential records” and “Open records,” as follows:

“*Confidential records*” means records, as defined under Iowa Code sections 22.7, 22.8, 904.601, 904.602 and 904.603, which ~~are~~ may not be disclosed to members of the public except by court order or other provision of law. This includes records which the board is prohibited by law from making available for inspection by members of the public and those exempt records which the board has determined not to disclose to members of the public.

“*Open records*” means those records which are ~~not authorized or required to be kept confidential under~~ defined by Iowa Code ~~section~~ sections 22.7, 22.8, 904.601, or 904.602 or any other provision of the law.

ITEM 20. Amend subrule 5.3(3) as follows:

5.3(3) Request for access. Requests for access to records may be made in writing, in person, by telephone, or by electronic means if the request is for open record information. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

ITEM 21. Amend subrule 5.3(7) as follows:

5.3(7) Fees.

c. ~~Supervisory~~ Hourly fee. ~~An A~~ A reasonable hourly fee may be charged for actual agency expenses ~~in supervising the examination and copying of~~ providing requested records when the ~~supervision~~ time required is in excess of ~~five~~ 30 minutes. That hourly fee shall not be in excess of the hourly wage of an agency employee who ordinarily would be appropriate and suitable to perform this ~~supervisory~~ function. Reasonable costs may also be assessed for copying and providing records through means other than electronic mail.

ITEM 22. Amend rule 205—5.6(17A,22), catchwords, as follows:

205—5.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.

ITEM 23. Amend subrule 5.7(1) as follows:

5.7(1) Consent to disclose by a subject individual. ~~Consent to disclose by a subject individual.~~ To the extent allowed by law, the subject may consent in writing to agency disclosure of confidential records ~~as provided in rule 205—5.4(17A,22).~~

ITEM 24. Amend subrule 5.7(2) as follows:

5.7(2) Complaints to public officials. ~~Complaints to public officials.~~ A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in

a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

ITEM 25. Amend subrule 5.7(3) as follows:

5.7(3) *Obtaining information from a third party.* ~~Obtaining information from a third party.~~ The board is required to obtain information to assist in making decisions regarding classification, programming, security and administrative management. Requests to third parties for this information may involve the release of confidential information about individuals. Except as provided by law, the board may make these requests only when the individual has authorized the release.

ITEM 26. Amend subrule 5.10(2) as follows:

5.10(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. ~~Following~~ Below are instances when disclosure, if lawful, will generally occur without notice to the subject:

a. to *d.* No change.

e. To the legislative services agency under Iowa Code ~~Supplement~~ section 2A.3.

f. and *g.* No change.

h. In the course of ordinary deliberations during an open meeting.

ITEM 27. Amend paragraph **5.12(2)“d”** as follows:

d. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets ~~under~~; (Iowa Code section ~~17A.3(1)(d);~~ 173A.3(1)“d”)

ITEM 28. Amend subrule 5.13(1) as follows:

5.13(1) *Personally identifiable information.* This rule describes the nature and extent of personally identifiable information which is collected, maintained and retrieved by the agency by personal identifier in record systems as defined in this rule. For each record system, this rule:

a. and *b.* No change.

ITEM 29. Amend subrule 5.13(2) as follows:

5.13(2) *Litigation files.* ~~Litigation files.~~ These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons ~~wishing~~ requesting copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

ITEM 30. Amend subrule 5.13(3) as follows:

5.13(3) *Personnel files.* ~~Personnel files.~~ The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, and tax withholding information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

ITEM 31. Amend rule 205—5.14(17A,22), introductory paragraph, as follows:

205—5.14(17A,22) Other groups of records available for public inspection—policies and procedures (excluding security), meeting minutes. This rule describes groups of records maintained by the board other than record systems as previously defined. These records are routinely available to the public. However, the board’s file of these records may contain confidential information, as discussed in rule 205—5.12(17A,22) 205—5.10(17A,22). The following records are ~~stored both as hard copy and in automated data processing systems unless otherwise noted~~ available.

ITEM 32. Amend subrule 5.14(6) as follows:

5.14(6) *Published materials.* The board uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law. ~~These records are hard copy only.~~

ITEM 33. Amend subrule 6.2(2) as follows:

6.2(2) *Disclosure to inmate.* The board shall place a written communication concerning an inmate, parolee, or work releasee in the case file. ~~The board shall inform an inmate, parolee, or work releasee when a communication adverse to the inmate, parolee, or work releasee will be considered in making a parole or work release decision and shall disclose to the inmate, parolee, or work releasee the substance of any opinion regarding the inmate's, parolee's or work releasee's status unless withholding the information is requested by the person providing the statement or oral communication and the board determines that the release of the information would endanger the public safety.~~

ITEM 34. Amend subrule 6.3(1) as follows:

6.3(1) *General.* The public may examine and copy ~~board~~ public records belonging to the board pursuant to Iowa Code chapter 22 at the board's business office. An individual wishing to examine or copy a record in person must schedule an appointment with the board's business office a minimum of three working days prior to the date on which the individual will review the information in question. When making the appointment, the requesting party shall specifically indicate the information desired. Complete inmate files will not be released except by court order. When photocopies of documents or copies of audiotapes or videotapes are provided, the board may require the requester to pay the cost of the copies plus a reasonable charge for copying pursuant to 205—subrule 5.3(7). These charges are to be determined by the lawful custodian. The board may refer anyone requesting information which has been generated by a source outside the board to the agency or individual which generated the information.

ITEM 35. Amend subrule 6.4(1) as follows:

6.4(1) *Public information.* ~~Public information.~~ The following information regarding individuals receiving services from the department of corrections or a district department is public information and may be disclosed by the board to anyone who requests the information, except that information shall be limited to the offense for which an individual was last convicted:

a. to j. No change.

k. Type of services received, except medical, psychiatric, psychological, and substance abuse, ~~gambling and sex offender~~ treatment information.

l. No change.

~~*m.* Inmate risk assessment score.~~

ITEM 36. Amend subrule 6.4(2) as follows:

6.4(2) *Confidential information regarding inmates and parolees.* ~~Confidential information regarding inmates and parolees.~~ The following information regarding individuals receiving services from the department of corrections or a district department is confidential information and shall not be disclosed to the public:

a. and b. No change.

c. Medical, psychiatric, psychological, and substance abuse treatment, ~~gambling and sex offender treatment~~ information.

d. to q. No change.

ITEM 37. Amend subrule 6.4(3) as follows:

6.4(3) *Exceptions.* The board may disclose confidential information described in subrule 6.4(2) as follows:

a. to d. No change.

ITEM 38. Rescind and reserve rule ~~205—6.5(904A)~~.

ITEM 39. Amend subrule 7.6(1) as follows:

7.6(1) A registered victim of a violent crime may appear in person or electronically, personally or by counsel at a parole interview to express an opinion concerning the release of the inmate.

ITEM 40. Amend subrule 7.6(2) as follows:

7.6(2) If a registered victim of a violent crime intends to appear at a parole interview, the victim ~~should~~ shall communicate such intent to the board's business office or victim liaison 24 hours prior to the start of the parole interview.

ITEM 41. Amend subrule 7.6(3) as follows:

7.6(3) If intending to appear at a parole interview, a registered victim of a violent crime, or victim's counsel, shall choose to appear at the board's business office, or ~~other ICN location as previously arranged~~, electronically at the time set forth in the notice of parole interview. During the parole interview, the board shall permit the victim or victim's counsel to express an opinion concerning the release of the inmate.

ITEM 42. Amend subrule 7.6(4) as follows:

7.6(4) Victims shall be properly attired and shall conduct themselves in a manner consistent with decorum appropriate for a public meeting of a governmental body. They shall be respectful of other victims, spectators, media personnel, board staff, and board members present. They shall also be mindful of noise and behavior that might impact other individuals observing or participating electronically, or working individuals in the board's business office building ~~or other ICN location where they victims~~ may be while participating in the parole interview.

ITEM 43. Amend subrule 7.6(5) as follows:

7.6(5) Any activity deemed inappropriate by the panel under the guidelines in the rules may result in a request by the panel for the offending party or parties to leave. Warnings for inadvertent or minor misconduct may or may not be given the first time it occurs, and any subsequent offending activity will result in a request to leave. Refusal to leave upon request may result in removal ~~by law enforcement of the offending party or parties~~.

ITEM 44. Amend rule 205—7.7(915) as follows:

205—7.7(915,22) Disclosure of victim information. Information regarding a registered victim, as well as the existence of a registered victim in a particular case, is confidential and shall not be disclosed to the public. A victim's registration, and the substance of any opinion submitted by the victim regarding the inmate's release, may shall not be disclosed to the inmate ~~at the discretion of the board~~.

ITEM 45. Amend rule 205—8.2(906) as follows:

205—8.2(904,906) Parole and work release eligibility.

8.2(1) Mandatory sentences. The board shall not grant parole to an inmate serving a mandatory minimum sentence. The board shall not grant work release to an inmate serving a mandatory minimum sentence unless the inmate is within six months of completing the mandatory minimum portion of the sentence. A parole or work release granted contrary to this rule shall be rescinded. Mandatory sentences are as follows:

a. A life sentence imposed for conviction of a Class class "A" felony pursuant to Iowa Code section 902.1, except for a life sentence that expressly includes parole eligibility;

b. to h. No change.

8.2(2) ~~Parole and work release while on patient status. Release to residential facility first.~~ Generally, the board will not grant parole or work release to an inmate on patient status. A person on parole or work release who is serving a sentence under Iowa Code section 902.12 shall begin parole or work release in a residential facility operated by a judicial district department of correctional services.

8.2(3) Parole to detainer. The board may grant parole to an inmate against whom a detainer has been placed by another state jurisdiction. ~~Generally, the board will not parole an inmate to a detainer that is~~

~~solely for prosecution~~ A person paroled who has a detainer lodged against the person under the provisions of Iowa Code chapter 821 may be paroled directly to the receiving state rather than to a residential facility operated by a judicial district department of correctional services.

8.2(4) *Parole to other states.* The board may grant parole to another state pursuant to the provisions of the interstate ~~parole and probation~~ compact for adult offender supervision set forth in Iowa Code chapter ~~907A~~ 907B.

ITEM 46. Renumber rules **205—8.5(904A)** to **205—8.17(906)** as **205—8.3(904A)** to **205—8.15(906)**.

ITEM 47. Amend renumbered rule 205—8.4(906) as follows:

205—8.4(906) Parole and work release considerations.

8.4(1) *Case reviews.* ~~Case reviews.~~ The board may review the records of an inmate committed to the custody of the department of corrections and consider the inmate's prospects for parole or work release at any time. The board shall notify an inmate only if the inmate is granted parole or work release, except as provided in ~~8.16(3)~~ subrule 8.14(3).

8.4(2) *Interviews.* ~~Interviews.~~ The board may, in its discretion, interview an inmate committed to the custody of the department of corrections at any time.

8.4(3) *Frequency of inmate review.* The board shall review the status of each inmate who is eligible for parole annually as directed by the Iowa Code and shall provide the inmate with notice of its parole or work release decision. ~~After an inmate has been granted work release, the board shall review the inmate's status at least annually from the date of the decision to grant work release. The board shall not place an inmate on work release for longer than 6 months in any 12-month period unless approval is given by a majority of the full board.~~

8.4(4) *Annual review not required.* ~~Inmates serving a sentence that does not include parole eligibility who are not currently eligible for parole because of Iowa Code section 906.5(1) "a" are excepted from the annual review requirement of 8.6(3) subrule 8.4(3).~~

8.4(5) ~~Inmates serving a mandatory minimum sentence are excepted from the annual review requirements of 8.6(3) until such time as the mandatory minimum has expired.~~

8.4(6) 8.4(5) *Department initiated review.* ~~Department initiated review.~~ The department of corrections may recommend an inmate for parole or work release consideration at any time.

ITEM 48. Amend renumbered subrule 8.8(1) as follows:

8.8(1) *Release considerations.* The board may consider the following factors and others deemed relevant to the parole and work release decisions:

a. to o. No change.

ITEM 49. Amend renumbered subrule 8.8(2) as follows:

8.8(2) *Psychological and psychiatric evaluations.* ~~Psychological and psychiatric evaluations.~~ The board may request a complete psychiatric or psychological evaluation of an inmate whenever, in the opinion of the board, it would be beneficial to the board's decision. The board shall routinely request an evaluation of an inmate convicted of a crime involving sexual abuse or personal violence, or of an inmate who has committed assaults or violent acts while incarcerated.

ITEM 50. Amend renumbered subrule 8.9(3) as follows:

8.9(3) The inmate's reports from institutions under the supervision of the department of corrections, including reception reports, progress reports, medical reports, and social information or reports, should, to the extent possible, be structured so as to separate opinion from factual information. The factual information shall be made available for review by the inmate; opinion information shall be confidential. Psychiatric or psychological test results or diagnoses ~~shall~~ may be deemed confidential.

ITEM 51. Amend renumbered rule 205—8.10(906) as follows:

205—8.10(906) Interview procedure. The board may, in its discretion, ~~or board panel may, in its discretion,~~ interview the inmate and consider the inmate's records with respect to history, current

situation, parole and work release prospects, and other pertinent matters. If the inmate is interviewed, the board or board panel shall give the inmate ample opportunity to express views and present materials.

ITEM 52. Amend renumbered subrule 8.12(2) as follows:

8.12(2) Conduct of inmate.

a. to e. No change.

f. An inmate who forfeits the right to an interview for reasons under 8.14(2)“e” paragraph 8.14(2)“e” or for any other reason shall not be interviewed again until the inmate’s next annual review, or until such earlier time as determined by the board, except that the inmate may make a request for an earlier interview. The request must be made in writing to the board through the board liaison officer, the counselor or other institutional staff member, or the ombudsman, together with assurance by the inmate that no repeat of the offending conduct or other offending conduct will occur. A reinterview is subject to the discretion of the panel or board.

ITEM 53. Amend renumbered subrule 8.12(3) as follows:

8.12(3) Conduct of spectators.

a. Spectators may not participate in the parole proceedings. The number of spectators will be limited by the ~~number of seats provided~~ capacity available. ~~Only If attending in person, only~~ board staff or institutional staff will be allowed to stand during the interviews or between interviews, except during breaks of the panel or board or as necessary to enter and leave during times designated by the panel or board. An exception will be made for television camera operators.

b. ~~Spectators~~ If attending in person, spectators may not enter or leave the room during interviews or between interviews, except that the board or panel will designate times when persons may enter and leave. This ~~will~~ shall be done at reasonable intervals, and may be between interviews even though the board or panel does not take a break.

c. ~~Entering~~ If attending in person, entering and leaving the interview room before and after the interview sessions and during breaks in the interview sessions shall be subject to the restrictions imposed by board staff.

d. Spectators shall make no utterances which are intended to be or can be heard by the inmate or the panel. This includes any conversation among spectators.

e. Spectators shall be properly attired and shall conduct themselves in a manner consistent with decorum appropriate for a public meeting of a governmental body. They shall be respectful of other spectators, victims, media personnel, board staff, and board members present. They shall also be mindful of noise and behavior that might impact other individuals ~~working~~ in the board’s business office building or other ICN location where they may be while observing the parole interview.

f. Any activity deemed inappropriate by the panel under the guidelines in the rules may result in a request by the panel for the offending party or parties to leave. Warnings for inadvertent or minor misconduct may or may not be given the first time it occurs, and any subsequent offending activity will result in a request to leave. Refusal to leave upon request may result in removal ~~by law enforcement of the offending party or parties.~~

~~All spectator places~~ Admission for in-person attendance shall be on a first-come, first-served basis in accordance with the rules of the board.

g. A spectator attending in person who leaves during a time designated for entering or leaving or during a short break by the panel may retain a ~~place~~ seat if the person returns at the next time designated for that purpose. A person does not retain a ~~place~~ seat at the hearing over breaks taken for lunch or dinner or overnight.

ITEM 54. Amend renumbered subparagraph 8.12(4)“a”(4) as follows:

(4) Notwithstanding the provisions of any of these procedural or technical rules, the panel or board may permit the use of other equipment provided the application for variance is made in advance. Ruling upon the variance application shall be in the discretion of the ~~panel or board~~ chair or chair’s designee.

ITEM 55. Amend renumbered subparagraph **8.12(4)“a”(5)** as follows:

(5) The ~~panel or board chair~~ or the chair's designee may limit or terminate photographic or electronic media coverage by any or all media participants at any time during the proceedings in the event the ~~panel or board chair~~ or the chair's designee finds that rules in this chapter or additional rules imposed by the board or panel have been violated.

ITEM 56. Amend renumbered subparagraph **8.12(4)“c”(2)** as follows:

(2) Television cameras and other recording equipment. Television cameras are to be electronic and, together with any related equipment ~~to be located in the interview room~~, must be unobtrusive in both size and appearance, without distracting sound or light. Television cameras, and other recording devices, are to be designed or modified so that participants in the parole interview being covered are unable to determine when recording is occurring.

ITEM 57. Amend renumbered paragraph **8.12(4)“g”** as follows:

g. Movement during proceedings. Television cameras and audio equipment may be installed in or removed from the interview room only when the panel or board is not in session. In addition, the equipment shall at all times be operated from a fixed position. Media personnel shall not move about the interview room while proceedings are in session, nor shall they engage in any movement which attracts undue attention. ~~Still photographers~~ Photographers shall not assume body positions inappropriate for spectators.

ITEM 58. Amend renumbered paragraph **8.12(4)“h”** as follows:

h. Decorum.

(1) All media personnel shall be properly attired and shall conduct themselves in a manner consistent with decorum appropriate for a public meeting of a governmental body. They shall be respectful of other media personnel, victims, spectators, board staff, and board members present. They shall also be mindful of noise and behavior that might impact other individuals ~~working in the board's business office building or other ICN location where they may be while observing the parole interview.~~

(2) Any activity deemed inappropriate by the panel under the guidelines in the rules may result in a request by the panel for the offending party or parties to leave. Warnings for inadvertent or minor misconduct may or may not be given the first time it occurs, and any subsequent offending activity will result in a request to leave. Refusal to leave upon request may result in removal ~~by law enforcement of the offending party or parties.~~

ITEM 59. Amend renumbered rule 205—8.13(906) as follows:

205—8.13(904,906) Parole and authorized following work release decisions.

8.13(1) and **8.13(2)** No change.

~~**8.13(3)** and **8.13(4)** Rescinded IAB 10/31/12, effective 12/5/12.~~

~~**8.13(5)**~~ **8.13(3)** The board may determine if an inmate shall be required to provide a physical specimen to be submitted for DNA profiling as a condition of parole or work release. The board shall consider the deterrent effect of DNA profiling, the likelihood of repeated violations by the offender, and the seriousness of the offense. When funds have been allocated from the general fund of the state, or funds have been provided by other public or private sources, the board shall order DNA profiling, if appropriate.

ITEM 60. Amend renumbered subrule 8.15(4) as follows:

8.15(4) The grant of parole contingent upon successful completion of work release shall comply with subrules ~~8.15(1) through 8.15(4)~~ **8.13(1)** and **8.13(2)**.

ITEM 61. Amend **205—Chapter 8**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 904, 904A₂ and 906.

ITEM 62. Amend rule **205—9.1(906)**, definition of “Eligible offender,” as follows:

“*Eligible offender*” means a person who has been convicted of one or more ~~than one~~ eligible ~~crime~~ or eligible offense crimes and has been sentenced to the custody of the director of the Iowa department of

corrections. Persons required to register under Iowa Code chapter 692A are ineligible for the certificate of employability program.

ITEM 63. Amend subrule 9.3(1) as follows:

9.3(1) The department of corrections shall issue a certificate of employability, at the time of release, to an eligible offender who:

- a. Receives a parole, work release, or early discharge from the board of parole; and
- b. Successfully completes one of the following:
 - (1) Department of corrections registered apprenticeship program; or
 - (2) National Career Readiness Certificate and the life skills program.

ITEM 64. Amend rule 205—11.2(908) as follows:

205—11.2(908) Work release day reporting revocation. When a work release day reporting inmate is subject to revocation of day reporting status, the work release day reporting inmate shall be entitled to all procedural protections afforded parolees pursuant to Iowa Code ~~sections 908.3 to 908.7~~ chapter 908 and rules 205—11.3(908) to 205—11.11(908).

ITEM 65. Amend rule 205—11.4(908) as follows:

205—11.4(908) Revocation of parole. The board of ~~parole~~ or its administrative parole judge, for good cause shown, may revoke any parole previously granted. Good cause for revocation of parole shall include the violation of a condition or conditions of the parole agreement or parole plan. Parole revocation procedures, including the parole revocation hearing, are governed by Iowa Code chapter 17A.

ITEM 66. Amend rule 205—11.7(908) as follows:

205—11.7(908) Parole revocation hearing. Following submission of a parole officer's request for a parole revocation hearing, the parole officer shall schedule the parole revocation hearing and shall cause a notice of parole revocation hearing to be completed. The parole revocation hearing shall be held in any county in the same judicial district as that in which the alleged parole violator had the initial appearance, or in the county from which the warrant for the arrest of the alleged parole violator was issued, unless proper venue is waived by the parolee.

11.7(1) Parole revocation hearing notice. The parole officer or board's designated officer shall cause to be prepared a written notice to the parolee, and parolee's attorney, if applicable, of the date, time, and place of the parole revocation hearing, which shall:

a. to c. No change.

11.7(2) No change.

11.7(3) Parole revocation hearing recorded. Parole revocation hearings shall be ~~mechanically~~ electronically recorded. The recording or transcription thereof shall be filed and maintained by the board of ~~parole~~ for at least five years from the date of the parole revocation hearing.

11.7(4) to 11.7(6) No change.

11.7(7) Subpoenas—general. Subpoenas may be issued by the board of ~~parole~~ to require the attendance of witnesses or the production of documents at parole revocation hearings.

a. No change.

b. *To whom made.* Requests may be made directly to the administrative parole judge, the board's designated officer, or the parole officer, as appropriate. The parole officer shall provide the necessary information to the board of ~~parole~~ in order to process the request.

c. and d. No change.

e. *Costs.* The board of ~~parole~~ shall not be required to pay subpoena service fees, witness fees, or witness transportation expenses.

11.7(8) No change.

11.7(9) Areas of responsibility. The following areas of responsibility will apply for a parole revocation hearing.

- a. The parole officer shall be responsible for the following:
- (1) Coordinating and scheduling location, security, and control of the parole revocation hearing;
 - (2) Preparing notice of hearing forms and causing the notices to be served;
 - (3) Notifying the parolee's attorney of record of the hearing date, time, and place;
 - (4) Notifying all necessary state witnesses of the hearing date, time, and place;
 - (5) Processing any required subpoenas on behalf of the state;
 - (6) Ensuring that all relevant state documents, forms, and materials are available at the hearing;
 - (7) Attending the hearing;
 - (8) Arranging security for posthearing transfer of the parolee in the event incarceration is ordered.
- b. The administrative parole judge shall be responsible for ~~the following~~: maintaining records on all hearings.

~~(1) Maintaining records on all hearings;~~

~~(2) Reserved.~~

11.7(10) and 11.7(11) No change.

11.7(12) Parole revocation hearing—conduct of the media. The provisions governing the conduct of the media at parole interviews as set out in ~~205—subrule 8.14(4)~~ 205—subrule 8.12(4) shall also apply to parole revocation hearings, except that decisions committed to the discretion of the board or board panel in that rule shall be made by the presiding administrative parole judge.

11.7(13) Motions and requests. Any motion or request shall be submitted to the administrative parole judge or the board's designated officer, with copies to all parties, prior to the hearing. The parolee or parolee's attorney may submit any motion or request directly to the administrative parole judge, or designee, or through the parole officer. The board of parole does not utilize EDMS for submissions or notifications.

ITEM 67. Amend rule 205—11.8(908) as follows:

205—11.8(908) Appeal or review. The order of the administrative parole judge shall become the final decision of the board of parole unless, within ten days of the date of the decision, the parole violator appeals the decision or a panel of the board reviews the decision on its own motion.

11.8(1) General. On appeal or review of the judge's decision, the chairperson or board panel's designee has all the power which the administrative parole judge would have in initially making the revocation hearing decision. The record on appeal or review shall be the record made at the parole revocation hearing conducted by the administrative parole judge. Appeals must be received at the parole business office or postmarked by the applicable date or they will not be considered. An order continuing disposition or an order finding probable cause to believe an interstate compact parolee violated parole conditions is not a final order and therefore is not appealable. The board shall give notice of its decision to the parolee.

11.8(2) Grounds. All grounds shall be included in the same appeal, and all necessary documents and information shall be attached to the appeal. The general grounds for an appeal include that the board action is:

a. to e. No change.

f. Unsupported by evidence or based on incorrect or incomplete information which, if correct or complete, might have resulted in a different action; or

g. Unreasonable, arbitrary, ~~or~~ capricious, or characterized by an abuse of discretion or a clearly unwarranted exercise of decision.

11.8(3) No change.

ITEM 68. Amend subrule 11.11(1) as follows:

11.11(1) When the parole officer makes a request to the board of parole for a revocation hearing, the parole officer shall inform the parolee of the parolee's rights.

ITEM 69. Amend subrule 11.11(2) as follows:

11.11(2) The parole officer shall also inform the parolee of the opportunity to waive the parolee's right to personal appearance and consent to ~~the~~ a parole revocation ~~hearing's being~~ hearing that is conducted over the telephone.

ITEM 70. Amend subrule 11.12(2) as follows:

11.12(2) The parole officer shall forward to the board ~~of parole~~ a violation report together with a file-stamped copy of the judgment entry and sentencing order for the offense committed during the parole. An administrative parole judge shall review the violation report and the judgment entry and sentencing order and, if satisfied that the conditions of Iowa Code section 908.10 or 908.10A and of this rule have been met, shall issue an order revoking the parole. The judge shall also determine the date of commission of the felony or aggravated misdemeanor offense and the date of subsequent incarceration in a state institution. Time loss shall be the time between these two dates, except that the parolee shall receive credit for any time the parolee was incarcerated in a county jail between these two dates.

ITEM 71. Renumber **205—Chapter 13** as **205—Chapter 12**.

ITEM 72. Amend renumbered rule 205—12.2(906) as follows:

205—12.2(906) Persons not eligible. A parolee convicted of a violation of Iowa Code section 709.3, 709.4, or 709.8 committed on or with a child or a person serving a sentence under Iowa Code section 902.12 shall not be discharged from parole until the person's term of ~~the parolee's sentence expires~~ parole equals the period of imprisonment specified in the person's sentence, less all time served in confinement.

ITEM 73. Renumber **205—Chapter 14** as **205—Chapter 13**.

ITEM 74. Amend renumbered rule 205—13.1(902) as follows:

205—13.1(902) Interviews of inmates serving life terms without the possibility of parole. The board shall not grant a parole or work release to a ~~Class~~ class "A" felon serving a life term without the possibility of parole unless the governor commutes the sentence to a term of years. Administrative rules relating to the parole and work release consideration of an inmate sentenced to an indeterminate term shall not apply to an inmate sentenced to a life term without the possibility of parole.

ITEM 75. Amend renumbered rule 205—13.2(902) as follows:

205—13.2(902) Review of inmates serving life terms. The board may, at its discretion, review the record of a ~~Class~~ class "A" felon serving a life term.

ITEM 76. Amend renumbered paragraph **13.3(1)"b"** as follows:

b. An application for a pardon or commutation of sentence shall be on the form provided by the board. The form may be obtained by contacting the board's business office or the office of the governor.

ITEM 77. Amend renumbered paragraph **13.3(3)"b"** as follows:

b. A person applying for restoration of citizenship shall submit the ~~Executive Clemency Application~~ form to the governor. This form may be obtained from the governor's office or from the board. ~~The governor shall obtain a recommendation regarding restoration of citizenship from the board.~~

ITEM 78. Amend renumbered rule 205—13.4(914,902) as follows:

205—13.4(914,902) Board investigation. The board may investigate an application ~~or district department recommendation~~ with respect to history, current situation, parole prospects and other pertinent matters. The board may consider the application or recommendation, transcripts of judicial proceedings and all documents submitted with the application, and other documents as the board determines is appropriate, and may interview, directly or through its agent, public officials, victims, and witnesses and other individuals as the board determines is appropriate.

ITEM 79. Amend renumbered subrule 13.5(1) as follows:

13.5(1) Decision.

a. The board shall recommend that the governor grant commutation of sentence to a ~~Class~~ class “A” felon serving a life term when the board unanimously agrees that the inmate should be considered for release on parole. If the board does not unanimously agree, the board shall recommend that the governor not grant commutation of sentence.

b. The board shall recommend that the governor grant executive clemency to a person other than a ~~Class~~ class “A” felon serving a life term when at least three members of the board agree that the person has demonstrated that the person will become or continue to be a law-abiding citizen. If three members of the board do not agree, the board shall recommend that the governor not grant executive clemency.

c. The board may utilize the resources of the department of public safety for assistance with any part of the board’s investigation.

ITEM 80. Amend renumbered subrule 13.5(4) as follows:

13.5(4) *Executive clemency reconsiderations.*

a. ~~The board may reconsider at any time a board recommendation to grant executive clemency that the governor has denied and returned to the board a positive or negative recommendation prior to the governor’s decision when previously unknown and material information comes to light, material actions or events relevant to the application occur, the governor directs the board to further investigate the application, or good cause is otherwise shown. The procedures for reviewing an executive clemency application shall apply to the reconsideration of a denied recommendation.~~

b. ~~The board may refile the recommendation with the governor or withdraw the recommendation amend its recommendation as deemed appropriate.~~

ITEM 81. Amend renumbered rule 205—13.6(902) as follows:

205—13.6(902,915) Commutation procedure for ~~Class~~ class “A” felons.

13.6(1) *Initial review.* ~~The board of parole, or its designee, will initially review an application for commutation to determine whether the inmate is eligible to apply for commutation pursuant to Iowa Code section 902.2. If the inmate is not eligible to apply for commutation pursuant to Iowa Code section 902.2, the board shall return the application to the governor and notify the governor of the reasons applicant.~~

13.6(2) *Parole board commutation investigation process.*

a. ~~If the applicant is eligible to apply for commutation pursuant to Iowa Code section 902.2, the board shall conduct an investigation pursuant to that section and subrule 14.6(2) 13.6(2).~~

b. The board may consider any documents the board deems appropriate including, but not limited to, the application and attached documents, transcripts of judicial proceedings, corrections information, and written recommendations, statements, and interviews of the offender, public officials, victims, and witnesses.

c. ~~The board shall interview the applicant, pursuant to Iowa Code section 902.2, prior to submitting its recommendation to the governor. The board may interview any other person the board deems appropriate including, but not limited to, public officials, victims, and witnesses. The board may conduct any interview, including the interview of the applicant, through electronic means.~~

d. The board shall attempt to provide notice of the commutation interview to any individual who would qualify as a victim under Iowa’s victim notification law. Notice shall be by regular mail to the last-known address or by electronic mail. The notice shall provide a specified amount of time for the victim to provide a statement to the board regarding the application for commutation.

e. ~~The board may utilize the resources of the department of public safety for assistance with any part of its investigation.~~

f. e. The board may hold a public hearing to receive comments from the general public on an application for commutation. The determination to hold a public hearing to receive public comments is solely at the discretion of the board.

13.6(3) *Recommendation and report.*

a. ~~The board shall vote on a recommendation regarding the application. Any decision to recommend commutation for a class “A” felon shall be by unanimous vote. The board may continue the matter until such time as the board may determine by majority vote.~~

b. to d. No change.

13.6(4) No change.

ITEM 82. Amend renumbered **205—Chapter 13**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 902.2, 902.4, and 904A.4(7) and ~~chapter~~ chapters 914 and 915.

ITEM 83. Renumber **205—Chapter 15** as **205—Chapter 14**.

ITEM 84. Amend renumbered rule 205—14.1(17A) as follows:

205—14.1(17A) General. An inmate, parolee, or work releasee may appeal any action of the board staff or board that affects that person except a decision to schedule a hearing or a work release transfer hearing decision, any commutation-related action, an appeal decision, the decision to conduct an appearance by electronic means, or the revocation of parole which shall be appealed according to the procedure indicated in rule 205—11.8(908).

ITEM 85. Amend renumbered rule 205—14.2(17A) as follows:

205—14.2(17A) Grounds. The general grounds for an appeal ~~include that the board action is~~ are:

1. to 5. No change.

6. Unsupported by evidence or based on incorrect or incomplete information which, if correct or complete, might have resulted in a different action; or

7. No change.

ITEM 86. Renumber **205—Chapter 16** as **205—Chapter 15**.

ITEM 87. Amend renumbered **205—Chapter 15**, title, as follows:

WAIVER AND VARIANCE RULES WAIVERS

ITEM 88. Amend renumbered rule 205—15.1(17A) as follows:

205—15.1(17A) Definition. For purposes of this chapter, “a waiver ~~or variance~~” means action by the board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 89. Amend renumbered rule 205—15.4(17A) as follows:

205—15.4(17A) Criteria for waiver ~~or variance~~. In response to a petition completed pursuant to rule ~~16.6(17A)~~ 205—15.6(17A), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. to 4. No change.

ITEM 90. Amend renumbered rule 205—15.6(17A) as follows:

205—15.6(17A) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. to 3. No change.

4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule ~~205—16.4(17A)~~ 205—15.4(17A). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.

5. to 10. No change.

[Filed 3/13/23, effective 5/10/23]

[Published 4/5/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/23.